Case: 1:09-cv-02770-JG Doc #: 20 Filed: 08/13/11 1 of 2. PageID #: 919

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF OHIO

DONALD TURNER,

v.

: CASE NO. 1:09-CV-2770

Petitioner,

: ORDER

TIMOTHY BRUNSMAN, Warden,

:

Respondent.

JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

Petitioner Donald Turner seeks a writ of habeas corpus under 28 U.S.C. § 2254. [Doc. 1.] On March 30, 2011, Magistrate Judge George Limbert filed a Report and Recommendation recommending that this Court dismiss Turner's petition in its entirety, with prejudice. [Doc. 11 at 21.] For the reasons set forth below, the Court **ADOPTS** Magistrate Judge Limbert's Report and Recommendation.

The Federal Magistrates Act requires a district court to conduct a *de novo* review only of those portions of a Report and Recommendation to which the parties have made an objection. 28 U.S.C. § 636(b)(1)(C). Parties must file any objections to a Report and Recommendation within fourteen days of service. *Id.* Failure to object within this time waives a party's right to appeal the magistrate judge's recommendation. Fed. R. Civ. P. 72(a); *see also Thomas v. Arn*, 474 U.S. 140, 145 (1985); *United States v. Walters*, 638 F.2d 947, 949-50 (6th Cir. 1981). Absent objection, a district court may adopt the Magistrate's report without review. *See Thomas*, 474 U.S. at 149.

Petitioner Turner failed to file a timely objection. On May 4, 2011 this Court adopted the unopposed Report and Recommendation in whole, [Doc. 12], and issued judgment denying Turner's

Case: 1:09-cv-02770-JG Doc #: 20 Filed: 08/13/11 2 of 2. PageID #: 920

Case No. 1:09-CV-2770

Gwin, J.

petition for writ of habeas corpus. [Doc. 13.] On May 7, 2011, Petitioner Turner moved for

reconsideration, claiming that he never received the Report and Recommendation and was therefore

unable to file a timely objection. [Doc. 14.] Though the Petitioner's claims did not support a motion

to reconsider, the Court construed the request for reconsideration as a motion for extension of time,

and allowed Petitioner Turner until June 30, 2011 to file an objection. [Doc. 19.] Petitioner Turner

did not file any objection during the extension period and has not filed any since. Accordingly, the

Court **ADOPTS** in whole Magistrate Judge Limbert's Report and Recommendation.

The Petitioner's contemporaneous appeal to the Sixth Circuit precludes any further

consideration of his petition by this Court. The Petitioner filed a Notice of Appeal to the Sixth

Circuit docketed on May 26, 2011. [Doc. 15.] Filing a notice of appeal divests a district court of

jurisdiction until the Court of Appeals remands the case. See United States v. Garcia-Robles, 562

F.3d 763, 767 (6th Cir. 2009); Dunham v. United States, 486 F.3d 931, 935 (6th Cir. 2007). The

Sixth Circuit held the appeal in abeyance to allow this Court to rule on any pending objections, but

returned the appeal to its active docket when the objection period expired. Turner v. Brunsman, No.

11-3623 (6th Cir. July 20, 2011). This action is therefore terminated under Federal Rule of Civil

Procedure 58.

IT IS SO ORDERED.

Dated: August 13, 2011

James S. Gwin

JAMES S. GWIN

UNITED STATES DISTRICT JUDGE

-2-